

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

GENESIS HEALTH CARE CENTERS  
d/b/a HARSTON HALL

Employer-Petitioner

and

Case 4–UC–406

DISTRICT 1199C, NATIONAL UNION  
OF HOSPITAL AND HEALTH CARE  
EMPLOYEES, AFSCME, AFL-CIO

Union Involved

**REGIONAL DIRECTOR’S DECISION, ORDER,  
AND CLARIFICATION OF BARGAINING UNIT**

The Employer-Petitioner, Harston Hall, operates a skilled nursing care and assisted living center in a facility in Flourtown, Pennsylvania. The Union Involved, District 1199C, NUHHCE, currently represents a bargaining unit of about 100 service and maintenance employees at this facility, and the Employer-Petitioner and the Union Involved have a collective-bargaining agreement covering the unit employees that is effective from June 1, 2002 to April 30, 2006. The Employer-Petitioner filed a unit clarification petition with the National Labor Relations Board (NLRB) under Section 9(b) of the National Labor Relations Act seeking to clarify the existing unit to exclude the newly-created classification of Unit Clerk. The Union Involved opposes this petition.

In support of its petition, the Employer-Petitioner contends that the Unit Clerk lacks the requisite community of interest with employees in the existing unit to become part of the unit through accretion. The Union Involved asserts to the contrary that the Unit Clerk has a strong community of interest with unit employees, particularly the Certified Nursing Assistants (CNAs), and should be included as an accretion to the existing unit. Additionally, the Union Involved contends that prior to the time that the Employer-Petitioner established the position, the Unit Clerk’s work was historically performed by unit employees. The Union Involved further contends that the Board regularly includes Unit Clerks in service and maintenance units and that the Union Involved and other health care facilities have historically agreed to include Unit Clerks in these units.

A Hearing Officer held a hearing in this matter, and the parties filed briefs. I have considered the evidence and the arguments presented by the parties and, as discussed below, I have concluded that that the unit should be clarified to exclude the Unit Clerk. In this Decision, I

will first present an overview of the Employer-Petitioner's operations and then shall review the factors that must be evaluated in determining whether the Unit Clerk should be accreted to the existing unit. Thereafter, I will present in detail the relevant facts and reasoning that support my conclusion.

## **I. OVERVIEW OF OPERATIONS**

The facility's skilled nursing care unit has 120 beds, and the assisted living unit has 76 beds. The facility has three floors. Offices and service areas, including common areas for residents' activities, are located on the first floor, and residents' rooms are located on the second and third floors. The second and third floors each have a nursing station.

The Employer's highest-ranking official is the Administrator. The Nursing Department is run by the Director of Nursing (DON) and also includes Unit Managers and Charge Nurses, who may be either Registered Nurses (RNs) or Licensed Practical Nurses (LPNs). The Employer also employs, inter alia, a Staff Development Coordinator, who handles employee education and new employee orientation. Among other non-unit positions, the Employer has an Admissions Director, Business Office Manager, Maintenance Director, Laboratory Technician, Environmental Service Director, Central Supply Clerk, Receptionist, and Medical Records Coordinator. These employees have offices on the first floor of the facility.

The bargaining unit represented by the Union Involved includes the following classifications: Housekeepers, Maintenance Employees, Certified Nursing Assistants (CNAs), Non-Certified Nursing Assistants, Laundry Workers, Dietary Aides, Property Specialist, and Cooks. The collective-bargaining agreement specifically excludes office and clerical employees from the unit.

## **II. FACTORS RELEVANT TO DETERMINING WHETHER THE UNIT CLERK SHOULD BE INCLUDED IN THE UNIT**

The Board normally will not entertain a petition for unit clarification during the term of a contract to modify the composition of a unit that is clearly defined in the collective-bargaining agreement. *Bethlehem Steel Corp.*, 329 NLRB 241 (1999). However, it is well established that unit clarification is appropriate for resolving ambiguities concerning the unit placement of individuals in a newly-established classification. *E.I. DuPont de Nemours, Inc.*, 341 NLRB No. 82, p. 2 (2004); *Premcor, Inc.*, 333 NLRB 1365, 1366 (2001).

The appropriate standard for determining whether employees in newly-created positions should be included in existing bargaining units is whether they constitute an accretion. *Safeway Stores, Inc.*, 256 NLRB 918 (1981). The Board has followed a restrictive policy in finding accretions to existing units in order to preserve the right of employees to choose their own bargaining representative. *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001); *Towne Ford Sales*, 270 NLRB 311 (1984), enfd. 759 F.2d 1477 (9<sup>th</sup> Cir. 1985). Thus, in *Melbet Jewelry Co.*, 180 NLRB 107 (1969), the Board emphasized that it will not, under the guise of accretion,

compel a group of employees to be included in an overall unit, “without allowing those employees the opportunity of expressing their preference in a secret election or by some other evidence that they wish to authorize the Union to represent them.”

The Board will find a valid accretion only when the additional employees have little or no separate group identity and when they share an overwhelming community of interest with the preexisting unit to which they are accreted. *E.I. Du Pont de Nemours*, supra; *Ready Mix USA, Inc.*, 340 NLRB No. 107, slip op. at 9 (2003); *Safeway Stores Inc.*, supra. When determining if new employees have a community of interest with employees of an existing bargaining unit, the Board considers various factors including interchange and contact among employees, degree of functional integration, geographic proximity, similarity of working conditions, similarity of employees’ skills and functions, supervision, and collective-bargaining history. *E.I. Du Pont de Nemours*, supra; *Archer Daniels Midland Co.*, supra. The factors normally viewed as most important are common day-to-day supervision and employee interchange. *Super Valu Stores*, 283 NLRB 134, 136 (1987); *Towne Ford*, supra.

### **III. FACTS**

#### *Creation of the Unit Clerk Position*

The Employer-Petitioner created the Unit Clerk position in November 2003. There was no discussion of this classification during negotiations for the current collective-bargaining agreement.

Three or four CNAs applied for the position and were interviewed by the DON, who selected CNA Sheila Samuels. Samuels began working as a Unit Clerk on November 11, 2003. The Employer-Petitioner does not currently anticipate the need for any additional employees in this classification.

According to Administrative Organizer Sheila Bennett, who is in charge of administering the contract for the Union Involved, since about 2001 or 2002 some unit employees on light duty status may have performed Unit Clerk functions for up to several months at a time. These employees were either CNAs or dietary employees. Samuels performed some of these functions shortly before she was selected to be the Unit Clerk at a time when she was on light duty status.

Prior to November 2003, Unit Managers or Charge Nurses generally performed Unit Clerk duties such as arranging for outside transportation for residents and performing specific clerical work. The Administrator and the DON decided, however, that the nursing department could be run more efficiently and could provide better direct nursing care to the residents if the Unit Clerk position was created instead of continuing to have Unit Managers or Charge Nurses perform clerical functions.

The Union Involved filed a grievance on January 6, 2004 concerning the Employer-Petitioner’s creation of the Unit Clerk position and made a demand for arbitration on March 11,

2004. In response, the Employer-Petitioner filed the petition in this case. The arbitration hearing is being held in abeyance pending the Board's decision as to this petition.

### *Unit Clerk Duties and Responsibilities*

The Unit Clerk works 80 to 90 percent of her time at the second floor and third floor nursing stations. She spends the remaining 10 to 20 percent of her time in a first floor office that she shares with the Staff Development Coordinator.

The Unit Clerk makes sure that the nursing stations run efficiently and are maintained in a neat and orderly fashion. She also organizes and maintains files, ensures that records are kept in order, and handles paperwork, such as incoming faxes, doctors' orders, laboratory reports, accident reports, and medical record forms.<sup>1</sup> The Unit Clerk, along with Unit Managers and Charge Nurses, initially answers telephone calls including personal calls for CNAs.

For about 40 to 50 percent of the Unit Clerk's time at the nursing stations she deals with outside parties. Specifically, she contacts managed care companies concerning insurance issues, schedules doctors' appointments, and arranges for transportation services for residents. The Unit Clerk relays the information concerning the scheduled doctors' appointments to the nursing staff, makes sure that the necessary physician referrals are obtained, and completes forms needed for accurate billing. In the first floor office, the Unit Clerk completes additional paperwork relating to doctors' appointments and transportation services. The Unit Clerk also ensures that the schedule for laboratory tests is followed and that needed information is provided to the Laboratory Technician for these tests. She updates a book indicating what laboratory tests have been performed and what tests need to be performed. The Unit Clerk does not perform any direct patient care work.<sup>2</sup> The job description for the Unit Clerk position states that a high school degree with college or business school course work is required, but Samuels only has a high school degree.

### *Contact and Interchange and Supervision*

The Unit Clerk interacts primarily with Unit Managers, Charge Nurses, and the DON. If the Unit Clerk is unavailable to do her work or is on leave or vacation, the Unit Managers and the Charge Nurses will perform her duties. The Unit Clerk never has substituted for a CNA or any other unit employee who was absent. She divides her time at the nursing stations between the two floors where the CNAs make their rounds. The Unit Clerk sometimes answers telephone calls for the CNAs.

The Unit Clerk's immediate supervisors are the Unit Managers from the two floors, but she also reports to the DON. Also, Charge Nurses can instruct the Unit Clerk to perform certain

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<sup>1</sup> The Unit Clerk is responsible for making sure that the necessary medical record forms are stocked in the nursing unit supply drawers. She obtains these forms from the Medical Records Coordinator, whose office is two doors away from her office on the first floor.

<sup>2</sup> The Administrator testified that if the Unit Clerk position were accreted into the unit, Samuels could possibly work overtime as a CNA, if needed, but would not be required to do so.

tasks, like getting forms from the file cabinet or checking when a resident's laboratory test is due. The DON will prepare the Unit Clerk's performance evaluation in November 2004, although the DON may delegate this task to a Unit Manager.

#### *Compensation and Working Conditions*

The Unit Clerk works from 8:00 a.m. to 4:30 p.m., Monday to Friday, and has not worked on weekends, although the DON could request that she work on a weekend in the future. Samuels wears nursing scrubs but is not required to do so.

The listed starting wage rate range for the Unit Clerk position is \$7 to \$16 per hour, depending upon the employee's experience. Currently, Samuels receives \$1 per hour more than CNAs, who earned \$9.75 per hour at the time of the hearing. The Unit Clerk receives the same package of fringe benefits as the facility's non-unit employees.

#### *Duties and Responsibilities of CNAs*

CNAs provide hands-on care for residents, which includes making sure that they are bathed, changed, properly groomed, dressed appropriately, and fed all their meals. The CNAs also provide fresh ice and water to residents' bedsides and make their beds. They apply simple dressings, slings, stockings, and support bandages to residents under the direction of a licensed nurse. They also answer residents' call lights or bells. CNAs complete forms indicating the vital signs of the residents and sometimes document residents' activities in a daily living book, which is maintained at the nursing station. They assist residents in walking and transport them throughout the facility using wheelchairs or stretchers. After the Unit Clerk schedules a doctor's appointment the Unit Manager, or occasionally the Charge Nurse, will inform the CNA that a resident needs transportation to a doctor's office, and the CNA then takes the resident from his or her room to an ambulance or wheelchair coach. The CNAs may accompany residents when they are transported outside the facility for doctors' appointments. They report any changes in a resident's condition, family concerns, and residents' complaints to the Charge Nurse and/or the Unit Manager.

The CNAs take direction from the nursing staff on the units, i.e., the Unit Managers and the Charge Nurses. All employees in the nursing department ultimately report to the DON but, unlike the Unit Clerk, the CNAs do not have daily interaction with the DON. The Unit Managers prepare the CNAs' evaluations.

The CNAs work on three different shifts: 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m. They work every other weekend. The CNAs are required to wear nursing scrubs. The job description for the CNA position states that a minimum of a high school diploma or equivalency degree is preferred.

#### *Non-Unit Clerical and Administrative Employees*

The Receptionist works in the front lobby. She answers the telephone, types letters, orders office supplies, and handles various administrative functions for the Administrator.

The Central Supply Clerk (CSC) works at a desk area in the central supply room on the first floor. She inventories, orders, receives, and distributes nursing supplies for the units.

The Medical Records Coordinator (MRC), who is an LPN by training, works in an office on the first floor. She maintains the facility's records, making sure that they are in proper order, and performs chart audits to ensure that the charts include the necessary documentation to comply with federal and state regulations. She also orders medical record forms and delivers new admission charts from the Admissions Department to the nursing stations. The MRC keeps files of admissions and discharges and pertinent demographic information on the residents.

#### *Unit Clerks at Other Facilities*

The record does not clearly indicate if or how the Employer is connected with other companies, including other nursing care facilities with the "Genesis" name.<sup>3</sup> The record shows that at two facilities identified as being connected to "Genesis," Wayne Nursing and Rehabilitation Center and The Belvedere – A Genesis-Crozer-Keystone Health System Center, Unit Clerks are in the service and maintenance units represented by the Union Involved.

The Unit Clerk is also part of several other service and maintenance bargaining units represented by the Union Involved that have no connection to Genesis. These include Hahneman University Hospital, Chestnut Hill Rehabilitation Hospital, Girard Medical Center, and St. Joseph's Hospital. For the most part, the record does not indicate whether the Unit Clerks were included at these locations as a result of stipulations between the parties, Board decisions, or post-election agreements.<sup>4</sup>

## **IV. ANALYSIS**

The petition is timely as it concerns the status of a newly-created position during the term of a collective-bargaining agreement. *Bethlehem Steel*, supra; *Premcor, Inc.*, supra.

As to the merits of the petition, I find that the Unit Clerk does not share an overwhelming community of interest with employees in the unit. Thus, there currently is no interchange between Unit Clerks and the unit employees, as the Unit Clerk does not perform the work of, or substitute for, any unit employees or vice-versa. In fact, although the Unit Clerk was formerly a CNA, her current duties are markedly dissimilar from the CNAs' duties; the CNAs are responsible for providing direct patient care, while the Unit Clerk is primarily responsible for performing paperwork and making arrangements by telephone with outside parties. The Unit

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<sup>3</sup> A "Genesis Health Ventures" website indicates that Genesis Healthcare Corp. has a Genesis ElderCare Division, which operates over 225 skilled nursing centers and assisted living residences in 13 states. The name of Genesis Health Ventures has recently been changed to Neighborcare Inc.

<sup>4</sup> The record indicates that at Hahneman University Hospital, a pre-election hearing was held in 1974 or 1975, and Unit Clerks were included in the subsequent certification of the unit.

Clerk's duties are actually more similar to the duties of non-unit clerical and administrative employees than to the CNAs' duties. The Unit Clerk shares supervision to some extent with the CNAs as both classifications receive direction from the Unit Managers and Charge Nurses. However, unlike the CNAs, the Unit Clerk reports directly to the DON and interacts with her on a daily basis. The Unit Clerk also divides her time at the nursing stations between the two floors and presumably reports to different Unit Managers and Charge Nurses on each floor. The Unit Clerk works a single shift from 8 a.m. to 4:30 p.m. while the CNAs work on three different shifts, none of which coincide exactly with the Unit Clerk's shift, and unlike the Unit Clerk the CNAs work on weekends. Samuels works approximately 80 to 90 per cent of the time at the second floor and third floor nursing stations, and at those times, she works in close proximity to CNAs, but her duties do not require her to interact extensively with them. She also spends 10 to 20 percent of her time in a first floor office away from the residents' rooms where the CNAs work. The CNAs are required to wear nursing scrubs while the Unit Clerk does so voluntarily, and the Unit Clerk earns \$1 more per hour than the CNAs. On balance, I find that although the Unit Clerks work near the CNAs much of the time and share some supervision with them, in view of significant differences in their duties and the lack of interchange, the record does not establish a strong enough community of interest to meet the stringent test for accretion. *Honeywell, Inc.*, 307 NLRB 278, 283-284 (1992); *Dennison Manufacturing Co.*, 296 NLRB 1037-1038 (1989); *Safeway Stores*, supra.

The Union Involved's additional contentions in opposition to the petition also lack merit. Contrary to the Union Involved's assertion, the Unit Clerk's work was not historically performed predominantly by unit employees. Thus, although a few non-unit employees on light duty status performed some of the Unit Clerk functions on a temporary basis, for the most part these functions were performed by Unit Managers or Charge Nurses. These non-unit employees made arrangements for doctors' appointments and resident transportation and also handled much of the paperwork now performed by the Unit Clerk. Cf. *Premcor, Inc.*, supra.

The Union Involved has cited several cases in which unit clerks were included in service and maintenance units.<sup>5</sup> However, in those cases, which involved pre-election proceedings rather than unit clarification petitions, the Board did not find unit clerks to constitute accretions to existing units. Moreover, most of those cases involved acute-care hospitals, and the Board's determinations were based in part on the congressional directive against undue proliferation of bargaining units in the health care industry and the Board's Healthcare Rule, 284 NLRB 1580 et al.

Finally, the record contains evidence that some other "Genesis" and non-Genesis facilities have included Unit Clerks in service and maintenance facilities. However, there is minimal evidence as to the circumstances leading to these inclusions, and no evidence that these situations are typical. I therefore find that the experience at other facilities has no bearing on the instant case. Accordingly, the Employer-Petitioner's request that the unit be clarified to exclude the Unit Clerk is granted.

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<sup>5</sup> *Lincoln Park Nursing and Convalescent Home, Inc.* 318 NLRB 1160, 1164 (1995); *Rhode Island Hospital*, 313 NLRB 343, 359 (1993); *St. Luke's Episcopal Hospital*, 222 NLRB 674, 676 (1976); *Mercy Hospitals of Sacramento*, 217 NLRB 765, 770 (1975).

## **V. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer-Petitioner is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union Involved is a labor organization within the meaning of the Act.
4. The unit should be clarified as requested by the petition.

## **VI. ORDER**

**IT IS HEREBY ORDERED** that the petition filed in this case be, and it hereby is, granted.

## **VIII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by E-mail. For details on how to file a request for review by E-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EDT on June 28, 2004.

Signed: June 14, 2004

at Philadelphia, Pennsylvania

/s/ [Dorothy L. Moore-Duncan]  
DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four